

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2115.04
COMPLAINT INVESTIGATOR:	Jennifer Campbell
DATE OF COMPLAINT:	April 6, 2004
DATE OF REPORT:	May 5, 2004
REQUEST FOR RECONSIDERATION:	n/a
DATE OF CLOSURE:	July 19, 2004

COMPLAINT ISSUES:

Whether the Southeastern School Corporation and Logansport Area Joint Special Services Cooperative violated:

511 IAC 7-27-7(a) by failing to implement the student's individualized education program (IEP) as written, specifically, failing to implement accommodations and the behavioral intervention plan (BIP).

511 IAC 7-27-3(a) by failing to have the required participants at a case conference committee (CCC) meeting convened on May 19, 2003.

511 IAC 7-26-2(d) by failing to ensure that all professional and paraprofessional staff serving the student received specialized inservice training in the area of the student's disability.

511 IAC 7-21-7 by failing to provide transportation for the student by making the parent transport the student to and from school to avoid having the student sit unsupervised in the school cafeteria in the morning before school begins.

During the course of this investigation an additional issue was defined as whether the school corporation and the planning district violated:

511 IAC 7-29-1(l) by failing to follow the procedures required by IC §20-8.1-5.1-12 when suspending a student, including a student with a disability.

FINDINGS OF FACT:

1. The Student is six years old, is enrolled in kindergarten, and is eligible for special education and related services as a student with autism spectrum disorder.
2. A CCC meeting was held on May 19, 2003, to discuss the progress and develop a program for the Student's 2003-2004 (kindergarten) school year. The Complainant asserts the following individuals did not participate in the CCC meeting: the Student's general education teacher, the occupational therapist, speech therapist, and school counselor. The CCC Report indicates the following individuals participated in the meeting: the parent, the School Principal, the Student's current General Education Teacher from Head Start, the Special Needs Manager from Head Start, the Physical Therapist (reporting for the Occupational Therapist), and the Student's teachers of record (one from Head Start and one from the School) the Speech Pathologist, and the Preschool Coordinator.

3. The IEP developed at the May 19th CCC meeting includes a section in which the CCC is to identify the “classroom adaptations and/or modifications and/or accommodations which are appropriate, including implementor, monitor, length, frequency, and duration.” The only things written in this section are the following: “Designated place to go to be alone when needed. Picture schedule. Offer options when behavior is inappropriate.”

4. On December 4, 2003, the IEP was revised, and the following adaptations, modifications, and/or accommodations are listed:

“Visual reminders

Papers are to be folded so student can see only a portion of the page

Trace dotted lines student is to cut on in green and stopping point in red

Trace areas to be colored one at a time

Use picture cues

Allow more time to complete assignments

Buddy-social

Provide task reminders

Allow freedom to move and stand

Restate direction – only two step directions”

Several of these items are included in the “Monitoring and Intervention” section of the *Classroom Management Plan Documentation for IEP*.

5. A *Classroom Management Plan Documentation for IEP* form is included with the Student's IEPs of May 19 and December 4, 2003. The form appears to be a type of behavioral intervention plan as it identifies target behaviors, reinforcers, redirection of inappropriate behavior, and monitoring and interventions. The May 19th IEP identifies the target behaviors as: following teacher directions; using appropriate communication skills to make needs known; biting; spitting; throwing objects; and running from the teacher. Although several consequences are indicated, the parent is to be contacted if the student becomes a “danger to himself and/or others.” The form does not define the nature of the parent contact nor does it include a provision that the student will be sent home for such behavior. Although Section E of the form asks the CCC to identify the method(s) to be used to document implementation of the plan, no methods are identified.

6. The December 4th *Classroom Management Plan* form identifies only two target behaviors: “follow classroom instruction without major incident [and] will demonstrate on task behaviors by not making disruptive noises.” However, in the section on “Redirection of Inappropriate Behavior” under “Reminders/Warning Behaviors,” the CCC has listed “spitting, hitting, biting, [and] invading personal space.” As with the previous IEP, several consequences are indicated, including contacting the parent. However, in the revised Plan, the parent is to be contacted when the Student's physical aggression is “out of control.” The form does not define the nature of the parent contact, does not include a provision that the Student is to be sent home for any of the target behaviors, and does not identify any method(s) to be used to document the implementation of the behavior management plan.

7. The Student was sent home from school for spitting, head butting, and kicking on August 25, October 17, and November 11, 2003. The Student was sent home on April 1 and 8, 2004, for trying to grab a student's neck, kicking a teacher, and throwing furniture. Although these behaviors are identified in the behavior management plans, the School provided no documentation that it implemented the plan when these behaviors occurred. In addition, the School did not comply with the requirements of Indiana Code § 20-8.1-5.1-12 when sending the Student home on these days.

8. The Complainant alleges that the Student's Teacher waited six weeks before reading the IEP because the Teacher did not want to have pre-conceived ideas about the Student. The Complainant asserts the

School did not implement the following IEP accommodations, specifically, failing to designate a place for the Student to go to be alone when needed; failing to provide visual cues for transition; and failing to offer options when behavior is inappropriate. The School provided no information or documentation to refute the Complainant's allegations or to demonstrate the implementation of the identified accommodations.

9. The Student's classroom teacher and instructional assistant received their first inservice training on autism spectrum disorder on November 26, 2003. The School asserts there was not a need for the training or a consultant to provide the training until then. An inservice training was held for all school staff on April 21, 2004. The School did not provide a reason for the nearly eight-month delay in providing the required inservice training.
10. The School asked the Complainant, around the first of the 2003-2004 school year, to transport the Student to school each morning to avoid having the student sit unsupervised in the school cafeteria before school begins. The Student was having difficulty transitioning from the cafeteria to the classroom, and the School did not provide one-to-one assistance between 7:45 a.m. and 8:00 a.m., so the Complainant agreed to transport the Student. The School did not offer the Complainant an alternative or reimbursement for the transportation provided. The School acknowledged that the Complainant has been transporting the Student to school from October 1, 2003, to the present. It is approximately a 20 mile round trip from the home to the School.

CONCLUSION

1. Findings of Fact #3 through #6 indicate that the Student's IEPs for the 2003-2004 school year included various accommodations and a classroom management plan for specific target behaviors. Findings of Fact #7 and #8 reflect that the School cannot document its implementation of the accommodations or the classroom behavior management plan. Finding of Fact #7 also demonstrates that the Student was suspended for behaviors that were to be addressed by the classroom behavior management plan. Therefore, a violation of 511 IAC 7-27-7(a) is found for the School's failure to implement the Student's IEP.
2. 511 IAC 7-27-3(a) requires the following participants at a CCC meeting: the parent, the public agency representative, a general education teacher if the student is participating in or expected to participate in general education, and the student's current Teacher of Record. Finding of Fact #2 shows that the requisite CCC participants were present at the May 19, 2003, CCC meeting. Therefore, no violation of 511 IAC 7-27-3(a) is found.
3. Finding of Fact #9 reflects the School provided inservice trainings in autism spectrum disorder to the Student's classroom teacher and instructional assistant more than three months after school started and that eight months elapsed before inservice training was provided to the rest of the Student's teachers. It is expected that inservice training to staff will be provided as quickly as possible to ensure that teachers and other staff working with a student with autism spectrum disorder have appropriate information and skills to work with the student. A three-month delay in providing this inservice to the Student's classroom teacher and instructional assistant means that the teacher and paraprofessional were not appropriately prepared to work with the Student. In addition, the eight-month delay in providing inservice to other staff working with the Student is inordinate. Therefore, a violation of 511 IAC 7-26-2(d) is found.
4. Finding of Fact #10 indicates the Complainant was required to transport the Student, and the School failed to reimburse the Complainant for her mileage or offer an alternate method of transportation. Therefore, a violation of 511 IAC 7-21-7 is found.

5. Findings of Fact #3, #4, #5 and #9 show the short-term removals of the Student from the School for behaviors identified in the Student's behavior management plan were not pursuant to the behavior management plan; therefore, each removal constitutes a suspension. Finding of Fact #7 reflects that the School failed to follow the requirements of IC §20-8.1-5.1-12 when suspending a student; therefore, a violation of 511 IAC 7-29-1(l) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Southeastern School Corporation and the Logansport Area Joint Special Services Cooperative shall:

1. Convene a CCC meeting, no later than May 21, 2004, to:
 - a. review and revise the Student's classroom behavior management plan (behavioral intervention plan) to address the various behaviors that impede the Student's educational progress. The CCC shall consider whether a new FBA needs to be conducted prior to reviewing and revising the existing BIP. As required by 511 IAC 7-17-8, the BIP must include positive behavioral intervention strategies and specify what skills will be taught as part of changing the Student's behavior. The BIP shall also identify when an individual strategy, intervention, or consequence will occur, as well as who is responsible for implementing the strategy, intervention, or consequence, and how such implementation will be documented.
 - b. consider the Student's need for extended school year (ESY) services or other compensatory educational services as a result of the lack of implementation of accommodations and classroom behavior management plan, as well as the delay in provision of inservice to the Student's teachers and other staff.
 - c. determine the transportation arrangements to be made for the Student. The Complainant's continued transportation of the Student shall occur only if the Complainant so desires, and not because of the lack of school-provided transportation or the lack of student supervision prior to the beginning of the instructional day. If such agreement is made, the terms of the agreement and reimbursement schedule shall be documented in the IEP.

A copy of the CCC Report and IEP shall be submitted to the Division no later than May 28, 2004.

2. Reimburse the Complainant for transportation for two round trips each instructional day the Complainant has provided the Student's transportation since October 1, 2003. Reimbursement shall be at the rate provided to School employees, and payment shall be made no later than May 14, 2004. The School shall submit to the Division no later than May 21, 2004, a written acknowledgement of payment received, signed by the Complainant.
3. Provide written information to appropriate staff regarding the requirements of 511 IAC 7-29 regarding temporary unilateral removals from a student's agreed upon placement and IC §20-8.1-5.1-12 when suspending a student with a disability. A copy of the written memorandum and a list of recipients shall be submitted to the Division no later than May 28, 2004.